**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 1949 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE J.R.VORA**
**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**THE STATE OF GUJARAT - Appellant(s)**
**Versus**
**VIJAY DEVSIBHAI BORSADIYA & 1 - Opponent(s)**

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**Appearance :**
MR IM PANDYA ADDL.PUBLIC PROSECUTOR for Appellant(s) : 1,
RULE NOT RECD BACK for Opponent(s) : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE J.R.VORA**

**and**

**HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 19/10/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE M.R. SHAH)**

1. Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the

judgment and order of acquittal dtd.15/6/2006 passed by the learned Presiding Office and Fast Track Court No.3, Jamnagar in Sessions Case No.33 of 2005 acquitting the respondents herein - original accused for the offences punishable under sections 366, 376, 506(2) and 114 of Indian Penal Code.

2. We have directed the office to call for the record and proceedings from the trial court and accordingly the record and proceedings from the trial court is available for our consideration. The learned Additional Public Prosecutor has drawn attention of the Court to the evidence on record, oral as well as documentary and we have considered the same.

3. As per the prosecution case, the victim and original complainant - Nilaben Chhaganbhai was residing with her parents, brother and sister at village Jaga and was travelling in bus while going to education institution along with her brother and accused No.1 – Vijay Devsibhai Borsadiya. That as per the prosecution case, the victim was knowing the accused persons as they were travelling together and was also travelling with her in the bus on 1/10/2004. The victim used to travel with her brother every morning. On the date of incident when the bus

reached Jamnagar, the brother of the victim separated on account of some other purpose for which he had gone and when she was passing near the hospital of Dr.Kavaiya, accused No.1 met her and threatened and asked her to sit on his motorbike and at that time, all of a sudden accused No.2 also sat over the motorbike and thereafter, all proceeded towards the Kalavad and reached Rajkot. It was further the case of the prosecution that she was asked to sign certain papers when they reached the court building and thereafter, the accused No.1 and victim travelled in bus which was going towards Ahmedabad. As per the case of the prosecution, at Ahmedabad, the accused Booked a room in a hotel and committed offence of rape against her will and wish. That thereafter, they travelled towards Surat and in Surat also the accused committed rape on her. On 4/10/2004, the parents and other relatives of the victim went to the place, where she was found and thereafter after a period of two and half months, a private complaint came to be field by the victim in the court of learned Chief Judicial Magistrate against accused persons for the offences punishable under sections 363, 376 of the Indian Penal Code and the learned Chief Judicial Magistrate passed an

order directing to send the said complaint for investigation under sec.156(3) of the Code of Criminal Procedure. The Complaint was registered as M.Case No.162 of 2004 by the City A-Division Police Station and investigation was handed over to Police Inspector Mr.V.D. Vohil, who was examined as PW 19 at Ex.63. After investigation, charge-sheet came to be filed by the investigating officer in the court of learned Chief Judicial Magistrate and as the case was Sessions triable, the learned Chief Judicial Magistrate committed the case to the Sessions Court, Jamnagar, which was numbered as Sessions Case No.33 of 2005 and thereafter the case was transferred to the court of learned Presiding Officer and Fast Track Court No.3, Jamnagar. Charges were framed against the respondents for the offences punishable under sections 366, 376, 506(2) and 114 of Indian Penal Code and in the alternate sec.34 of the Indian Penal Code. All the accused pleaded not guilty and therefore, the prosecution examined as many as 19 witnesses and produced on record voluminous documentary evidence. After the evidence of the prosecution was over, incriminating circumstances appearing against each of the accused was brought to the notice of them and their

defence was of a total denial in a statement recorded by learned trial court under Section 313 of the Code of Criminal Procedure. Thereafter the learned trial judge heard the prosecution as well as defence in detail and came to the conclusion of acquitting both the respondents of the charges levelled against them and hence this appeal.

4. Learned APP Mr. I.M. Pandya on behalf of the State is heard in detail in respect of this Appeal.

5. We have gone through the Record and Proceedings of the trial court minutely and threadbare. We have considered the vital features of the matter and reasonable probability arising out of the circumstances of the case. We have taken into account the appreciation of the evidence undertaken by the trial court and reasons assigned for the acquittal. We have taken into consideration the contentions raised by learned APP in this matter. We have scanned carefully the evidence recorded during trial after re-appreciating it to assess the reasons assigned by the trial judge for the acquittal.

6. The victim herself is examined by the prosecution as PW 10 at Ex.35, similarly the prosecution has also examined father of the victim Chhaganbhai Talshibhai at Ex.31. The

prosecution has also examined other witnesses namely Kiritbhai Khimjibhai at Ex.33, Jentibhai Tarshibhai at Ex.34, Maheshbhai Chhaganbhai Bhimani at Ex.36 and Jugalkushor Ichchhashankar Joshi at Ex.32. Panch witnesses Mahendrabhai Kalubha Parmar and Yusuf Ali Mamad came to be examined at Ex. Nos.24 and 25 respectively. Jugalkishor Ichchhashankar Joshi PW-7 is examined at Ex.32. He has totally denied the performing of the marriage of the victim with the accused No.1 and obtaining any signature on the papers. Victim Nilaben Bhimani PW-10, who is examined at Ex.35, has specifically denied that the accused persons have committed rape upon her. She has specifically stated that no signatures were obtained on the papers. She is declared as hostile witness. She was duly cross examined with the permission of the Court, however, from her cross-examination, nothing incriminating against the accused persons is found.

7. On considering the evidence of all the witnesses who are examined nothing has been found against the accused persons and the case against the accused persons for the offences punishable under sections 366, 376, 506(2) and 114 of Indian Penal Code is not proved. The prosecution

has produced documentary evidence to prove the case against the accused, however, not a single witness has supported the case of the prosecution. It appears that the learned trial judge has rightly acquitted all the accused persons for the charges levelled against them.

8. It is also required to be noted that the complaint has been filed after a period of two and half months and even as per the prosecution, the victim was first taken to Rajkot on motorbike and thereafter they had gone to Ahmedabad and then to Surat. Therefore, it is not possible that threat was administered by the accused persons all through out. The allegation with regard to signature of the victim on the marriage paper is concerned, the same is also not established and proved. Even the relatives of the victim, who are examined as witnesses, have also turned hostile and though they were cross-examined, nothing has been found from the same against the accused persons.

9. The learned trial court has come to the conclusion that the prosecution has failed to prove the case against the accused persons for the offences punishable under sections 366, 376, 506(2) and 114 of Indian Penal Code.

10. We have gone through the evidence recorded and the

papers produced by the prosecution and on considering the same, it appears that the prosecution has mesirably failed to prove the case against the accused persons. None of the witness who are examined, have supported the prosecution. Even the victim herself has not supported the prosecution. The relatives of the victim who are examined, have also not supported the prosecution. Thus, the prosecution has mesirably failed to prove the case against the accused persons for the offences punishable under sections 366, 376, 506(2) and 114 of Indian Penal Code. The conclusion arrived at by the trial court, therefore, could not be labelled as perverse, manifestly erroneous, palpably wrong or demonstrably unsustainable.

11. The scope of appeal against the acquittal is well defined by law. The orders against the acquittal cannot lightly be interfered unless it is found by the appellate court that the reasoning assigned by the trial court and conclusions arrived were so perverse that in any manner it cannot stand to reason. As discussed above, while assessing the reasons assigned by the trial judge and evaluating the conclusions, it is found that the trial judge has rightly taken the view to acquit the accused for the

charges levelled against them as prosecution could not establish the case against both the respondents. The judgment and order impugned in this Appeal, therefore, requires no interference. Hence, leave to appeal is refused and appeal is dismissed.

**(J. R. VORA, J.)**

**(M.R. SHAH, J.)**

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